IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

CRL.A.No. 416 of 2002()

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CC.272/1999 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHENGANNUR

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APPELLANT: COMPLAINANT

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P.S.MOHANAN,PERUMKUNNIL VEEDU,
KIDINGANNUR P.O.,PATHANAMTHITTA.

BY ADV. SRI.P.GEORGE WILLIAM

RESPONDENTS: ACCUSED & STATE OF KERALA.

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1. P.J.PRADEEP,S/O.JUNARAJA PANICKER,
PUTHENPARAMBIL VEEDU,MEZHUVELI P.O.,
PATHANAMTHITTA.

2. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.PHILIP M.VARUGHESE
BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.R.UDAYABHANU, J**

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Crl.A.No.416 of 2002

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Dated this the 15th day of October, 2007

**JUDGMENT**

The appellant is the complainant in C.C.No.272/99 in the court of Judicial First Class Magistrate-I, Chengannur with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. The case of the complainant is that the accused had borrowed a sum of Rs.3.5 lakhs which is the sum total of amounts borrowed at various times and that when the amount was demanded back the impugned cheque dated 25.2.1999 was issued which when presented got dishonoured for want of funds in the account of the accused.

3. The evidence adduced in the matter consisted of the testimony of PW1 and Exts. P1 to P11. The defence examined DWs' 1 to 4 and got marked Exts. D1 to D5.

4. It has come out in evidence that the lawyer notice issued was received but no reply notice was sent. Further, the complainant has produced Ext. P8 which is with respect to

O.S.No.507/99 instituted by the accused for a perpetual injunction restraining the complainant from disposing of 25 cents of land that the complainant allegedly agreed to sell to the accused as per the agreement executed on 3.12.1998 and on receiving Rs.50,000/- as advance sale consideration and for a total consideration of Rs.2.5 lakhs. It is submitted by the counsel for the complainant/appellant that the above suit has been dismissed. It is also submitted by the counsel for the appellant that the alleged agreement dated 3.12.1998 produced by the accused in O.S.No.507/99 was sent for expert opinion and the expert has returned the finding that the signature in the above agreement is forged. I find that the above document was not produced before the court below at the time of disposal of the instant case.

5. In the circumstances, I find that the matter requires reconsideration by the court below. The order of the court below acquitting the accused is set aside. The matter is remitted back to the court below for fresh disposal on merits after permitting the parties to adduce further evidence if they so desire

untrammelled by the observations if any contained in this order. The matter shall stand posted before the court below on 28.11.2007.

The criminal appeal is disposed of accordingly.

**K.R.UDAYABHANU,**
**JUDGE**

csl